

EXHIBIT 64

Letter dated May 20, 1954 to R.M. Gelvin
from Geraint Humphreys, Chief Irrigation Counsel

Irrigation
Legal

1758 U.S. Post Office & Court House
Los Angeles 12, California
May 20, 1954

Mr. R. M. Gelvin
Area Director
Bureau of Indian Affairs
Phoenix, Arizona

Re: Application No. 15226, Walker
River Irrigation District,
State of California, Department
of Public Works

Dear Mr. Gelvin:

We have just received a copy of Superintendent Ladd's letter of May 14, 1954, to you concerning the above captioned matter--and (proposed method of establishing storage right and date of priority for Weber Reservoir for the use of Indians of the Walker River Indian Reservation, Nevada).

This is supplemental to and in further consideration of his letter of January 4, 1954, to William J. Cashill, Special Attorney, Department of Justice, the letter of Madison B. Graves, U.S. Attorney dated March 23, 1954, to the Indian Service, Stewart, Nevada, for the attention of Mr. Proese, Superintendent Ladd's letter of March 29, 1954, to Mr. Graves in reply to said letter, letter from U.S. Attorney Madison B. Graves of April 8, 1954, to John R. Ross, Attorney-at-Law, Carson City, Nevada, Mr. Ladd's letter of April 6, 1954, to me in accordance with your request, my letter of April 20, 1954 to you, and your letter of May 7, 1954, to Superintendent Ladd, all concerning the said matter, and particularly in connection with establishing the right and date of priority for a storage right for Weber Reservoir.

As you will recall, I directed your attention in my letter of April 20, 1954, to the fact that both the Department of Justice and the letter of February 12, 1940, from the Secretary of the Interior to the Attorney General, indicated there was at least an informal understanding that the storage priority for Weber Reservoir ought to be fixed at or about April 15, 1936, when said reservoir was completed and put into operation.

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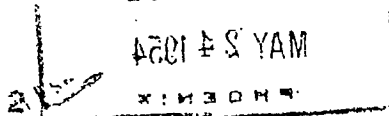
From Superintendent Ladd's letter of May 14, 1954, to you it appears that he has checked the Agency files and records and from his search has ascertained that the informal understanding between the Secretary of the Interior and the Department of Justice above referred to has never been formalized in that "the notice of completion of the Weber Reservoir as of April 15, 1936" as suggested by the Department of Justice and concurred in by the Secretary has never been filed with the proper State officials.

With Superintendent Ladd's letter he enclosed a letter from Irrigation Manager Kronquist to E. C. Fortier, then Supervising Engineer of the Indian Irrigation Service at San Francisco, dated January 9, 1939, which also deals with the matter of establishing a date of priority for the Weber Reservoir storage right, and indicates in brief an outline of some things that he thought would be necessary in the preparation of the aforesaid notice to be filed.

In my letter of April 20, 1954, to you, I indicated that from the information available to me I was then unable to say that the establishment of a date of priority for the Weber Reservoir storage right as briefly discussed in the correspondence previously referred to as "the first priority after the entry of the amended decree in United States v. Walker Irrigation District, et al.", would in fact jeopardize the storage right or be less valuable to the Indians than a priority as of the date of the completion of the Reservoir and its operation for storage of water from Walker River. As you know, that priority recently discussed and proposed in the correspondence furnished me contemplates a stipulation to the effect that as to Weber Reservoir there shall be recognized "the first priority after the entry of the amended decree in United States v. Walker River Irrigation District, et al.". (The amended decree was finally entered some time between April 25th and July 15, 1940.)

The proposed stipulation, whether it be called a notice or something else, would presumably assign a storage priority for Weber Reservoir as of 1940, the exact date of which would apparently be not later than July 15th of that year, but it might be any time after the actual date the amended decree was entered. (See last sentence of Madison B. Graves' letter of April 8, 1954, to John R. Ross, Attorney-at-Law, Carson City, Nevada.)

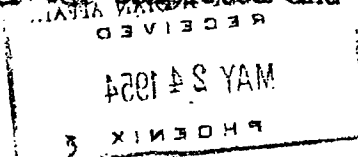
In view of the general practice in irrigated areas, and in fact the law with reference to appropriative rights in most of the Western states, including Nevada, a priority,



whether for storage or direct diversion, bears the date not later than the time when water was diverted, or if it were a reservoir the reservoir was completed and put into operation, and in some States if an application had been filed with the appropriate State officials the date would be fixed as of the date of the filing of the application, even though it would not become definite until actual diversion or storage of water had been effectuated and the water either put to beneficial use or stored and made ready for beneficial use. The latter concept of course would not apply here because there had been no application with the State authorities for permission to build the Weber Reservoir on and within Walker River Reservation, and in view of the fact that the Department of Justice and the Secretary of the Interior, all as indicated in the Secretary's letter of February 12, 1940, to the Attorney General indicated that a priority for the Weber Reservoir should be claimed as of the date of completion of that reservoir.

In view of Superintendent Ladd's findings, as indicated in his letter of May 14, 1954, I do not know whether at some time in the future a priority for Weber Reservoir storage right as of 1940 would be less valuable to the Indians than one of April 15, 1936, when the reservoir was completed and put into operation. Unless there is some good reason why it is necessary to fix the storage priority as number one after the entry of the amended decree, I suggest the advisability of having the stipulation or notice to be furnished to the appropriate State officials so drawn as to recite that Weber Reservoir was completed April 15, 1936, and put into operation, at which time the Indian Service commenced diverting water into the reservoir for storage and to be later used as irrigation, thus giving it a priority of April 15, 1936. Not only would that be more in harmony with the general practice and the rules of the various States, including Nevada, as to how priorities are fixed, it would also conform with the suggestion of the Secretary of the Interior and the Attorney General as made in 1940 and hereinabove referred to. Certainly the stipulation or notice, whichever you might decide to use, can be so drawn as to recite the facts and show when the reservoir was completed and put into operation, and water diverted and put to beneficial use.

I see no particular necessity, however, for belaboring a claim that the priority shall be April 15, 1936, if someone objects or does not want to agree to it, but the stipulation or the notice, whichever is used, can recite that that is when the reservoir was completed and the water put



to beneficial use, and would amount to nothing more than a recital in 1954 of an actual fact which had occurred and had been completed legally, as well as from an engineering standpoint on April 15, 1936.

I offer these suggestions for whatever they may be worth. I am sending a copy of this letter to Area Counsel Truswell, as well as to the interested Departmental officials.

Sincerely yours,

Geraint Humphreys
Chief Irrigation Counsel

cc - Solicitor, Attention: Mr. Flanery (With enclosures)
Acting Assistant Solicitor Sallery
W. L. Miller, Chief, Br. of Irrigation (With enclosures)
Area Counsel Truswell

